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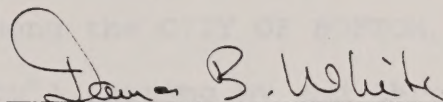
SECOND AMENDMENT TO APPLICATION FOR APPROVAL TO CARRY
OUT A PROJECT IN BOSTON, MASSACHUSETTS UNDER MASS. G.L.
c. 121A, AS AMENDED, AND STAT. 1960, c. 652, AND FOR
CONSENT TO THE FORMATION OF POST OFFICE SQUARE
REDEVELOPMENT CORPORATION

The undersigned (the "Applicants") hereby amend their Application dated November 14, 1983, as amended by a First Amendment to Application dated December 23, 1985, (collectively, the "Application") to the Boston Redevelopment Authority (the "Authority") pursuant to the provisions of Mass. G.L. c. 121A, as amended, ("Chapter 121A") the provisions of Stat. 1960, c. 652 and the rules and regulations of the Authority, as provided below. The subject of the Application is the Post Office Square Redevelopment Project (the "Project"), which was approved by the Authority in its report and decision on the Application dated May 10, 1984, as amended by a First Amendment to the Report and Decision dated April 3, 1986. The report and decision, as amended by said first amendment, is hereinafter referred to as the "Report and Decision". Capitalized terms not defined herein shall have the meanings set out in the Application.

- 1) The Applicants hereby request that the Authority determine that the revised Development Agreement attached hereto as Exhibit A (the "Revised Agreement") is consistent with and in furtherance of the Report and Decision.
- 2) The Applicants request that the Authority approve the execution by the Corporation of a Contract authorized under Section 6A of Chapter 121A in substantially the form attached hereto as Exhibit B, the form of which contract has been revised since its approval in the Report and Decision, and that the Authority determine that such Contract as revised conforms to the requirement for such a contract contained in the last paragraph of Section E of the Report and Decision.
- 3) The Applicants hereby request that the Authority grant permission for the Corporation to lease the Project Area during the period from acquisition of the Project Area until demolition of the existing garage, such lease to be subject to the approval of the Director of the Authority.

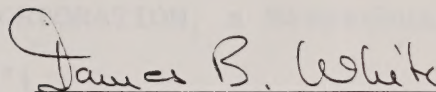
EXECUTED this seventeenth day of October, 1986.

PROGRAMS FOR PARKING, INC.
By its attorney:



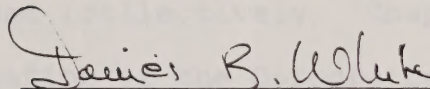
James B. White
PALMER & DODGE

PARKING IMPROVEMENTS, INC.
By its attorney:



James B. White
PALMER & DODGE

BETTER TRAFFIC, INC.
By its attorney:



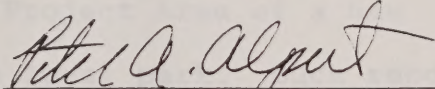
James B. White
PALMER & DODGE

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

October 17, 1986

Then personally appeared the above named James B. White, attorney for PROGRAMS FOR PARKING, INC., PARKING IMPROVEMENTS, INC., and BETTER TRAFFIC, INC., and, being duly sworn, acknowledged the foregoing instrument to be his free act and deed on behalf of such corporations. Before me



Notary Public
My commission expires:

PETER A. ALPERT, Notary Public
My Commission Expires April 23, 1993

DEVELOPMENT AGREEMENT

THIS AGREEMENT is made as of this ____ day of _____, 1986 by and among the CITY OF BOSTON, a municipal corporation (the "City"), acting by and through its Mayor, the BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts (the "Authority"), and POST OFFICE SQUARE REDEVELOPMENT CORPORATION, a Massachusetts corporation (the "Corporation").

WITNESSETH:

WHEREAS, on May 10, 1984, the Authority issued a report and decision, pursuant to the provisions of M.G.L. c. 121A and St. 1960, c. 642, as amended (collectively, "Chapter 121A"), consenting to the formation of the Corporation as an urban redevelopment corporation for the purpose of carrying out a project (the "Project") in Boston, Massachusetts. The Project consists of the acquisition of a parcel of land (the "Project Area") in Boston containing approximately 1.56 acres and bounded by Congress, Franklin, Pearl and Milk Streets, the demolition of the public parking garage now located thereon and the construction in the Project Area of a new underground parking garage and grade level park. Such report and decision was approved by the Mayor on October 4, 1984, and was filed with the Clerk of the City on January 17, 1986. Such report and decision was amended by a First Amendment to Report and Decision dated April 3, 1986, and by a Second

Amendment to Report and Decision dated _____, 1986, which amendments were approved by the Mayor on June 5, 1986 and _____, 1986, respectively, and were filed with the Clerk of the City on June 6, 1986 and _____, 1986, respectively. Such report and decision, as amended, is hereinafter called the "Report and Decision";

WHEREAS, the City and the Authority have determined that the construction of the Project, consisting as it does of an underground parking garage and grade level park and the payment of substantial revenues to the City, as more fully described in the Chapter 121A application for the Project dated November 14, 1983, and amended on December 23, 1985 and _____, 1986, (the "Application"), is in the best interests of the City and the public good and welfare;

WHEREAS, in view of the public nature of such improvements and the importance of such revenues to the City, the parties desire to provide opportunities for continued oversight by the City and the Authority of certain aspects of the Project, including the financing, operation, design, maintenance and orderly development of the Project;

WHEREAS, the Corporation and the City, recognizing that the parking spaces in the garage structure currently located in the Project Area will be unavailable during the construction of the Project, have agreed to work together to determine the effect of the unavailability of such spaces and whether means are available which would mitigate any adverse effect of the same;

WHEREAS, the parties desire to set out their understanding as to the use of the park portion of the Project by the public; and

WHEREAS, the City, the Authority and the Corporation are entering into this Agreement in reliance upon the performance of their various obligations hereunder,

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEVELOPMENT OF THE PROJECT

Section 1.1 Acquisition of the Project Area. The Corporation shall exercise due diligence and best efforts in an attempt to acquire the Project Area, provided that nothing contained in this Agreement shall be deemed to require the Corporation (i) to initiate or prosecute an eminent domain taking pursuant to Chapter 80A of the General Laws during any period of diligent and active negotiations with any owner of any interest in the Project Area (including, without limitation, the City), or (ii) to compromise or reach a settlement with any such owner, or otherwise compromise its position in any way, in order to expedite the acquisition of the Project Area, or (iii) to acquire the Project Area if the total compensation award established by the court in any

eminent domain proceedings conducted pursuant to said Chapter 80A is, in the sole discretion of the Corporation, too high to enable the Project to proceed as proposed.

Section 1.2 Commencement of Construction. After it acquires the Project Area, the Corporation shall exercise due diligence and best efforts in proceeding to cause demolition of the existing garage located in the Project Area. In any event, the Corporation shall cause such demolition to commence not later than the date which is sixteen (16) months after the Acquisition Date (as defined in Section 1.7), provided that, upon request of the Corporation, the Director of the Authority may, in his discretion, extend such deadline for up to an additional five (5) months. After such demolition, the Corporation shall exercise due diligence and best efforts in an attempt to develop the Project in accordance with the terms of the Application, the Report and Decision, and this Agreement, as any of the same may be amended, and to cause construction of the Project to commence and proceed in accordance with the Development Schedule attached hereto as Exhibit A.

Section 1.3 Failure to Proceed. If the Corporation fails to cause demolition of the existing garage to commence within the time period specified therefor in the second sentence of Section 1.2 hereof, then the City and the Authority may elect, by written notice to the Corporation, to rescind their approvals of the Project, in which event any

and all right of the Corporation to proceed with the Project shall terminate thirty (30) days after the date of such notice, unless such demolition has commenced in the meantime.

If at any time the City determines that the Corporation has failed to proceed with due diligence and best efforts in accordance with the provisions of Section 1.1, the first sentence of Section 1.2, or the third sentence of Section 1.2, the City may notify the Corporation in writing of such failure. Within thirty (30) days of receipt of such notice, the Corporation will report to the City in writing on the status of the Project. If the City reasonably determines on the basis of such report and any other information available to the City (and made available to the Corporation with the City's notice) that the Corporation is not proceeding with due diligence and best efforts in accordance with its obligations under said Sections, it shall so notify the Corporation in writing and shall set forth in such notice any action that the City reasonably believes is required to be taken for the Corporation to fulfill such obligations. If the Corporation fails to take such action within ninety (90) days from the date of such notice, and such action was reasonably capable of being taken by the Corporation within such ninety (90) day period, the City, at its election, may extend the date for performance of any obligation hereunder by the Corporation for such additional time as it in its sole

discretion determines, or may rescind its approval of the Project, in which event any and all right of the Corporation to proceed with the Project shall terminate immediately.

If at any time the Corporation has unsuccessfully exhausted all of its available legal rights to acquire the Project Area by eminent domain pursuant to Chapter 80A of the General Laws and to appeal the outcome of any proceeding conducted thereunder, the City may notify the Corporation of its intention to rescind its approval of the Project and terminate the Corporation's right to proceed with the Project. Such rescission and termination shall become effective sixty (60) days from the date of the City's notice, unless the Corporation has notified the City within such sixty (60) day period that it desires a one (1) year extension within which to acquire the Project Area, in which case the rights of the Corporation hereunder shall be extended for such one (1) year period, provided that the Corporation agrees to exercise due diligence and best efforts during such one (1) year period to acquire the Project Area and sets forth in such notice the actions necessary to acquire the Project Area.

Section 1.4. Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, the times and periods for performance by the Corporation contained in this Agreement, except the time for performance set forth in Section 1.6 hereof, shall be extended by the period of actual

delay caused by the failure of the City or the Authority to perform its obligations hereunder, or by reason of unforeseen scarcity of material or labor, strikes or similar labor disputes, damage by fire or other casualty or any other unforeseen cause beyond the reasonable control of the Corporation, provided that notice of any such delay is given by the Corporation to the City within thirty (30) days of the discovery by the Corporation of the event causing any such delay. If notice of such delay is given more than thirty (30) days after such discovery, the times and periods for performance shall be extended by such portion of the period of delay as occurs after the date of such notice.

Section 1.5 Rights of Mortgagee. If at any time during the term of this Agreement the City or the Authority intends to exercise any right to terminate any approval of the Project because of any action or inaction of the Corporation which would constitute a default hereunder, it shall first give notice of such default and its intention to terminate such approval to any mortgagee of all or any portion of the Project or the Project Area of which it has notice, and shall afford such mortgagee a reasonable opportunity to cure the Corporation's default.

Upon acquiring the Project Area, the Corporation shall have the right to grant a mortgage on the Project Area and the existing garage to a lender (the "Mortgagee"), for the purpose of (i) securing a loan to the Corporation to provide

funds for the Project, and (ii) if the Corporation obtains one or more letters of credit to secure any of its obligations to the lessee of the existing garage, securing the Corporation's obligations to the issuer of such letter of credit. Such loan shall be deemed not to be a "financing" for the purposes of Article IV of this Agreement. The sum of the principal amount of such loan, including the face amount of such letter of credit, shall not exceed \$6,000,000. Further, advances under such loan (for purposes of this sentence, the face amount of any letter of credit will be considered to be an advance made on the date of issuance of such letter of credit) may be made by the Mortgagee as follows:

i) \$4,000,000 for costs paid on or after June 6, 1986, provided the Corporation and the City certify to the Mortgagee that such costs are for the Project; and

ii) a sum equal to twice the amount which Friends of Post Office Square, Inc. ("Friends") and predecessor organizations or others interested in the Project actually expended on matters related to the Project prior to June 6, 1986, such sum to be as certified to the Mortgagee by the City; and

iii) a sum equal to amounts contributed to the Corporation or Friends on or after June 6, 1986 and expended on Project costs (or amounts guaranteed by shareholders of the Corporation or Friends on behalf of the Project), such sum to be certified to the Mortgagee by the City.

The certifications of the City referred to above shall not unreasonably be withheld or delayed. No funds provided under such loan shall be paid to any shareholder of the Corporation for any purpose except as reasonable compensation for services actually rendered to the Corporation. No director or stockholder of the Corporation or Friends shall have any obligation personally to commit additional funds for the Project, but this shall not limit obligations of the Corporation or Friends under various agreements with respect to the Project. Recognizing the desire of all parties to have the Project built, and the fact that additional monies may well be required, the City will reasonably consider requests to increase said amount of \$6,000,000 if such increase would be in the best interests of the Project. Without limitation, the City and the Corporation will determine whether the cost of interest rate protection, so-called, or other Project costs are in the best interests of the Project. If so, such additional costs may be covered by self-generated financing through a mortgage increase.

Reference is made to the fact that the proceeds of such loan may only be used for Project costs. If requested by the Corporation, the City will review and approve (or disapprove) a proposed budget setting forth Project costs expected to be funded (in whole or in part) by such loan. Upon approval of any such budget, the Mortgagee may

conclusively rely upon a certification from the Corporation that any requested advance is to be used for Project costs set out in such approved budget.

Such mortgage may provide that in the event of a default by the Corporation of any of its obligations under such mortgage and the continuance of such default beyond any applicable cure period, the Mortgagee may take possession of the existing garage (subject to the rights of any tenants occupying such garage under a lease from the Corporation), with or without commencing foreclosure proceedings, provided that such Mortgagee notify the City and the Authority in writing of its intention to do so. After such notice (unless the Mortgagee reverses such decision within sixty (60) days on account of some action of the Corporation to cure the default), the Mortgagee shall have the right to take possession of the garage (subject to any tenant, as aforesaid) and to operate or lease the same (after the expiration of any tenancy) until the date (the "Recovery Date") on which operating revenues or lease payments received by the Mortgagee are sufficient to reimburse the Mortgagee for all obligations of the Corporation under the mortgage (including, without limitation, all costs and expenses of the Mortgagee and interest on amounts outstanding after a default, as may be provided in the mortgage). After giving such notice, the Mortgagee will not be subject to the Corporation's obligations hereunder, under the Report and Decision, or under the Settlement Agreement between the City

and the Corporation concerning the City's eminent domain award on account of the Project Area. Without limitation, the Mortgagee will not be required to undertake the Project, to pay any sum to the City except as may be required by G.L.c. 121A, §10 or to keep parking rates in the existing garage below market level. However, upon the Recovery Date, the Mortgagee will be required to convey the Corporation's entire interest in the Project Area to the City for no consideration, and will thereafter have no further rights or obligations with respect to the Project Area or the Project. It is the intent of this provision that in the event of a default by the Corporation under the mortgage, the Mortgagee will have an unrestricted right (subject only to any lease executed by the Corporation) to operate the existing garage (by entering into an operating contract or lease) until it has fully recovered all amounts due it under the mortgage, and that the City will then obtain the Corporation's entire interest in the Project Area.

Section 1.6 City's Option to Rescind and Terminate.

Notwithstanding anything to the contrary contained in this Article I, and whether or not the Corporation has exercised due diligence and best efforts, if the Acquisition Date has not occurred by September 15, 1991, the City may, by written notice to the Corporation, rescind its approval of the Project and terminate the Corporation's right to proceed with the Project, or may extend such date for such additional time

as it in its sole discretion determines. Such rescission and termination will not affect the rights of a Mortgagee as set forth in Section 1.5 hereof.

Section 1.7 Acquisition Date. For purposes hereof, the "Acquisition Date" shall mean the date on which the Corporation shall have acquired fee simple title to the Project Area, subject only to the Report and Decision, this Agreement, and all other agreements between the Corporation, on the one hand, and the City and the Authority, or either of them, on the other hand, relating to the Project or the Project Area. If the Project Area is acquired by the exercise of the power of eminent domain pursuant to the provisions of G.L.c. 80A, the Corporation shall be deemed to have acquired the Project Area after final judgement of condemnation has been entered.

ARTICLE II

DESIGN

Section 2.1 Program Development. Concurrently with the execution hereof, the Mayor will appoint a committee (the "Program Development Committee"). The Program Development Committee shall consist of eleven (11) members. The membership shall include minority and female representation, and should reflect expertise or demonstrated interest in areas such as the following: urban design, architecture or landscape architecture, and park programming; there should also be representation from the community/park users. The

Program Development Committee will study the site, urban parks and parking garages in general to determine the program elements of a successful open space and underground parking garage on the Project Area.

As part of its study, the Program Development Committee will create a public forum to elicit comments on a successful park and underground parking garage on the site. Such forum shall be held not later than one hundred twenty (120) days after the date of this Agreement, and not less than fourteen (14) days prior to the submission of the Program Report (as hereinafter provided). The Corporation will provide funds to the Program Development Committee sufficient to perform its study, conduct such forum, and prepare its report (including, if necessary, any preliminary studies by outside experts), and such funds shall be considered costs of the Project.

Not later than the date which is one hundred thirty-five (135) days after the date of this Agreement, the Program Development Committee will submit to the Corporation and to the Authority a report (the "Program Report") outlining its conclusions. The Program Report will establish the program elements and parameters for the project, incorporate any necessary references resulting from the public forum, and specifically identify and define those elements related to the interplay of the park and the garage. The Program Report will provide the guidelines necessary to achieve the successful coordination of the design and construction processes for the park and the garage.

In order to expedite the construction of the garage, the Program Development Committee may issue an interim report which addresses: (i) the number and approximate location of elevators, ventilation shafts and access/egress ramps for the garage, (ii) the depth of earth cover necessary for the park (which may vary by location), and any other load requirements for the park, and (iii) any other features of the garage which will be located at the surface of the site or intrude in any way with the park. Such interim report will be submitted to the Corporation and the Authority in the same manner as a Program Report.

Within twenty-five (25) days after receipt of the Program Report or an interim report, the Corporation and the Authority will each either approve such report or return such report to the Program Development Committee with written reasons for disapproval. Upon any such disapproval, the Program Development Committee shall, within twenty-five (25) days, revise the Program Report (or interim report) and resubmit such report to the Corporation and the Authority for approval as aforesaid. Any failure of either the Corporation or the Authority to approve or disapprove any Program Report (or interim report) in writing within twenty-five (25) days after receipt thereof shall be deemed an approval of such report. Upon approval of the Program Report by both the Corporation and the Authority, such report shall be the "Approved Program Report".

Section 2.2 Request for Participation. At the time of the initial submission of the Program Report for approval, the Mayor will appoint a committee (the "Design Review Committee") to review proposed park designs. Such committee shall consist of not fewer than three (3) nor more than seven (7) members, at least three of whom shall be architects or planners, such membership to be mutually acceptable to the Mayor and the Corporation. The membership shall include female and minority representation. Upon receipt of an Approved Program Report, the Corporation will by appropriate advertisement notify the design community and the public of the competition and will issue Requests for Qualifications. Interested design teams will be asked to submit Qualifications to the Design Review Committee within four (4) weeks of the date of the first such advertisement. Within fourteen (14) days of receipt of all submissions, the Design Review Committee will select not less than ten (10) teams (provided that at least ten design teams have submitted such Qualifications) from the Qualifications submitted, which selections will be subject to the prior approval of the Corporation and the Authority. Such approval will be given or denied in writing within ten (10) days of a request therefor from the Design Review Committee, and any failure to act by either party within such period shall constitute an approval by such party.

Section 2.3 Designer Selection.

Section 2.3.a First Stage. Each of the selected design teams will immediately be issued a First Stage design competition kit, prepared by the Corporation at its expense, which shall include but not be limited to the Approved Program Report. Each design team will be asked to prepare two (2) Boards (as described in such first stage design competition kit) as an initial proposal for the park design and to submit them to the Design Review Committee not later than sixty (60) days after the issuance of the design competition kits (the "Proposal Due Date"). The Corporation will pay each team submitting such a design proposal a stipend in an amount to be determined by the Corporation, or will establish a prize structure to encourage participation in the competition and to ensure quality design.

Within twenty-one (21) days after the Proposal Due Date, the Design Review Committee will select at least three (3) teams, basing their decision on the criteria established in the Program Report as well as any other criteria they deem applicable. The Design Review Committee will then submit its decision for approval first by the Corporation, and then by the Authority. Such approval will be given or denied in writing within ten (10) days, and any failure to act by either party within such period shall constitute an approval by such party.

Section 2.3.b Second Stage. Within fourteen (14) days after the approved First Stage decision of the Design Review Committee, the Corporation will conduct a public viewing of submissions, identifying the three final designs, and (simultaneously or separately) a public forum to elicit reaction to the three final designs.

Within four (4) weeks after the approved First Stage decision of the Design Review Committee, each of the selected design teams will be issued a Second Stage design competition kit and will be asked to prepare a second submission refining and amplifying their initial submissions. Each team must submit a final design submission within sixty (60) days after the Second Stage design kits are issued (the "Second Stage Proposal Due Date").

Within fifteen (15) days after the Second Stage Proposal Due Date, the Design Review Committee will rank the Second Stage design submissions, again using the Program Report as part of their criteria. The decision of the Design Review Committee will be subject to approval first by the Corporation, and then by the Authority. Such approval will be given or denied in writing within fifteen (15) days, and any failure to act by either party within such period shall constitute an approval by such party. The Corporation will conduct a public viewing of the submissions, identifying the ranking of the submissions, and will provide opportunity for public comment.

Section 2.4 Design Development. The Design Review Committee will recommend to the Corporation that the Second Stage design submission receiving the highest ranking be given a commission to further develop the entry. The Corporation will thereupon enter into a participatory agreement with a design team, and such team shall prepare a preliminary final design. It is anticipated, but not required, that the Corporation will select such design team from the three Second Stage design teams. The Design Review Committee will submit to the Corporation a review of and comment upon the design. Upon approval by the Corporation, the preliminary final design will be submitted to the Authority for its review and approval. The submission to the Authority, and the Authority's review of the preliminary final design, shall be conducted in accordance with the Authority's standard design review procedures, to the extent that such procedures are not inconsistent with the provisions of this Agreement and any other agreement relating to the Project. The Authority may streamline such process or waive such procedures in its discretion, in order to advance the construction of the Project.

Section 2.5 Modification of Process. Notwithstanding the procedure set forth in Sections 2.2, 2.3 and 2.4 of this Agreement, if the Corporation and the Authority conclude, subsequent to the final approval of the Program Report, that it is in the best interests of the Project to modify the

process set forth herein (including, without limitation, modification of timing requirements, reduction in the number of design teams to be chosen in each stage, and elimination of one or more stages of the process), such parties may modify the process without amending this Agreement.

ARTICLE III

TEMPORARY TRANSPORTATION MANAGEMENT PROGRAM

Section 3.1 Report. Not later than ninety (90) days prior to demolition of the parking facility presently located on the Project Area, the Corporation shall submit a written transportation management plan to the City that shall set forth the number of parkers that is expected to be affected by the unavailability of such facility during construction of the Project, and a plan for accomodating the transportation needs of such parkers, which may include the provision of temporary replacement parking in areas outside of the downtown business district, the increased use of car and van pooling, public transportation, other underutilized lots and garages in or near the downtown business district, and similar measures. Such plan shall include a budget and implementation schedule.

The Corporation's report may identify possible sites for temporary replacement parking, which may include sites which are owned or controlled by the City. Such replacement

parking may consist of a site or sites at some distance from the Post Office Square area, provided that shuttle bus service is provided between the replacement parking and Post Office Square. The plan shall include an analysis of the traffic impacts and costs of each alternative considered therein. Sites for temporary replacement parking or sites otherwise proposed for parking as a part of the plan shall be reviewed with affected community groups. The final selection of any temporary replacement parking site by the Corporation shall be subject to the approval of the City.

Section 3.2 Implementation of Program of Alternatives.

The City shall review the transportation management plan submitted by the Corporation pursuant to Section 3.1 hereof, and any other alternatives it considers appropriate, and within thirty (30) days after receipt of such plan the City shall determine the adequacy of the proposed program. Upon approval by the City of the proposed program, the Corporation shall exercise its best efforts to implement all elements of the program.

The price structure of any temporary replacement parking provided by or on behalf of the Corporation pursuant to the transportation management plan shall not exceed the greater of (i) the market rate for

comparable parking or, (ii) such amount as may be necessary to adequately cover the costs associated with obtaining, operating, and maintaining such a facility. Such price structure shall be revised as necessary from time to time to prevent the accumulation of any material losses.

If at any time after the date which is ninety (90) days after the opening of any temporary replacement parking facility, such facility is producing insufficient revenues to cover operating costs, the Corporation may request the City's approval to move or close the facility or may request that the City increase or decrease the number of spaces required to be provided in such facility. The City shall not unreasonably withhold or delay its approval to any such request.

Not later than the date which is ninety (90) days prior to completion of the garage portion of the Project, the Corporation shall give written notice to the City setting forth its plans for any such replacement parking facility. After completion of the garage portion of the Project the Corporation or any affiliate thereof or any successor in interest thereto may operate the replacement parking facility without regard to the price restrictions contained herein, provided that if such continued operation of the facility is conducted by the Corporation or any affiliate thereof or successor thereto, the City shall have the right to require such facility to be closed at any time upon two (2) months prior notice to the Corporation or such affiliate.

Notwithstanding anything to the contrary contained herein, the Corporation's obligations hereunder shall be subject to its acquisition of the Project Area. The Corporation's obligations hereunder shall include using its best efforts to obtain, at its expense, all permits and approvals required in connection with the operation (or continued operation) of any temporary replacement parking facility and shuttle bus service provided pursuant to this Article III, including any approval of the City of Boston Air Pollution Control Commission. The granting of any temporary permit therefor shall not relieve the Corporation of its obligation with respect to any permit required for continued operation.

ARTICLE IV

PROJECT FINANCING

Section 4.1 Development of the Financing Plan. The Corporation, the Authority and the City agree that the preparation and implementation of the financing plan for the Project shall be a cooperative process, and the Corporation agrees to keep the City and the Authority informed on a regular basis of all material developments with respect to the financing for the Project. The Corporation shall (i) provide the City promptly upon the City's request with copies of any materials, papers, drafts or other documents relating to the financing of the Project, (ii) provide the City with the opportunity to attend and participate in all meetings

relating solely or in large part to the financing for the Project, including, without limitation, all planning and structuring meetings held among the Corporation, its representatives, underwriters, lawyers and others involved in financing of the Project, and (iii) consult with the City on all material aspects of such financing prior to seeking the City's approval thereof pursuant to this Article IV or the Report and Decision. Nothing in the preceding sentence shall entitle the City to attend or participate in meetings of the board of directors of the Corporation or to participate in any meeting, or obtain copies of any materials, which the Corporation may reasonably determine is of a confidential nature.

If the City has not elected to do so prior thereto, at such time as the Corporation notifies the City that it is prepared to proceed with the arranging of financing for the Project, the City may deliver to the Corporation a detailed summary of the City's assumptions and requirements relating to the financing for the Project. Except as otherwise approved by the City, the final Financing Plan for the Project shall be consistent with the assumptions and requirements contained in such summary.

Section 4.2 Approval of the Financing Plan. Not later than the date which is the later of: (i) ninety (90) days after the Acquisition Date, or (ii) ninety (90) days prior to demolition of the existing garage, and prior to entering into

any commitment for construction or permanent financing for the Project, the Corporation shall submit to the City and the Authority for their approval a proposed financing plan which shall include a complete Project pro forma operating statement (the "Financing Plan") for the construction and operation of the Project. The Financing Plan shall be a detailed written summary of the proposed financing, and shall include all documents relating to the financing and such background materials as the Corporation deems necessary or the City or the Authority may reasonably request to enable them to evaluate the Financing Plan. Within thirty (30) days after the submission of any proposed or amended Financing Plan by the Corporation, the City and the Authority shall notify the Corporation of its approval or disapproval of the Financing Plan or any part thereof, and any disapproval shall be accompanied by a written statement of the reasons for such disapproval and the City's or the Authority's proposed modifications to the Financing Plan necessary to make the plan acceptable. The City and the Authority shall exercise good faith in their review and in their approval or disapproval of the Financing Plan or any part thereof, but nothing herein shall affect their right to disapprove the Financing Plan for any reason related to such plan. Upon receipt of any such notice of disapproval, the Corporation shall prepare and submit to the City and the Authority for approval an amended Financing Plan. In the event that the City or the Authority fails to approve or disapprove any

proposed or amended Financing Plan in writing within thirty (30) days after submission thereof by the Corporation, the Financing Plan shall be deemed to have been approved by such party.

Section 4.3 Amendments to the Financing Plan. Upon approval of the Financing Plan by the City and the Authority, the Corporation will use its best efforts to cause the Project to be financed in accordance with the Financing Plan, and, except as provided below, shall not obtain construction or permanent financing for the Project otherwise than in accordance with the Financing Plan. Notwithstanding the foregoing, the Corporation may make such modifications to the Financing Plan as may be necessary or desirable for the success of the Project, if such modifications would not result in a material reduction in the anticipated return to the City from the Project. Any proposed modification which would result in such a material reduction will be deemed an amendment of the Financing Plan, and must be submitted to the City and the Authority for approval in the same manner as the original submission of the Financing Plan provided for in Section 4.2 hereof.

Section 4.4 Financing Documents. From time to time prior to the closing of any financing contemplated under the approved Financing Plan, the Corporation shall submit to the City drafts of the primary documents to be executed and

delivered in connection with such closing (such as any Loan Agreement, Mortgage or Offering Materials, but not including secondary documents which do not alter the basic terms of the financing), for its approval as to the Corporation's compliance with the requirements of this Article IV. The City shall, within ten (10) days of receipt of such drafts, approve or disapprove such drafts by notifying the Corporation in writing. Any failure to so notify the Corporation within such ten-day period will be deemed an approval of such drafts.

At the Corporation's option, it may deliver to the City with such drafts a brief summary of the provisions contained therein, together with a certification of the Corporation that the drafts are consistent with the Financing Plan, or the extent to which the drafts are inconsistent with the Financing Plan. In the event that the Corporation delivers such a summary and certification, the period within which the City must approve or disapprove the drafts shall be two business days, and any failure of the City to notify the Corporation of its approval or disapproval of the drafts within such period will be deemed an approval.

Any notice of disapproval given by the City pursuant to this Section 4.4 shall be accompanied by a statement setting forth the reasons therefor. Any approval given hereunder, whether by notice or by expiration of the applicable time period, shall conclusively establish that if such drafts are

executed and delivered at such closing without changes thereto which adversely affect the City, the requirements of this Article IV shall have been fully satisfied.

Section 4.5 Certain Profits of the Corporation. From the date hereof until completion of construction of the Project, in the event that the Corporation or any affiliate thereof receives revenues from activities conducted on the Project Area or in connection with the Project in excess of expenses associated with such revenues and any taxes or similar charges payable with respect to such revenues, such excess shall be applied towards costs of the Project or paid to the City, as the City may require in the Financing Plan. This provision shall not affect the rights of a Mortgagee as set out in Section 1.5 hereof, and shall not apply to revenues earned by any lessee of the existing garage which is not an affiliate of the Corporation.

Section 4.6 Certain Definitions. The terms financing and Financing Plan as used herein shall mean and include acquisition, construction, interim, permanent, long-term and any other financing obtained by the Corporation or secured by the Project or the Project Area, whether such financing is arranged at one time or different times.

ARTICLE V

GARAGE REVENUES

Section 5.1 Revenue Projections. Not later than the date which is ninety (90) days prior to the date on which the garage portion of the Project is opened for business, the Corporation shall prepare a projection of gross revenues from garage operations (a "Revenue Projection") for each of the first four (4) Operating Years (as hereinafter defined). In each year beginning with the first Operating Year, the Corporation will submit to the City, not later than ninety (90) days prior to the start to the next Operating Year, a Revenue Projection for the fourth Operating Year next following. Within thirty (30) days of receipt of the first Revenue Projection and each subsequent Revenue Projection, the City will notify the Corporation that it has approved such Revenue Projection, or that it objects to such Revenue Projection, and the reasons for such objection. Within thirty (30) days of receipt of any such objection, the Corporation will prepare a revised Revenue Projection, taking into account, to the extent it deems appropriate, the objections raised by the City, and will re-submit such Revenue Projection to the City for approval. If the City objects to any such revised Revenue Projection, the parties shall promptly participate in arbitration to determine the appropriate Revenue Projection for such year. Any failure of the City or the Corporation to act within the aforesaid

thirty (30) day periods shall be deemed an approval of the proposed Revenue Projection (in the case of such a failure by the City) or consent to the City's proposed changes to such Revenue Projection (in the case of such a failure by the Corporation).

Section 5.2 Failure to Achieve Projected Revenues. If for any two (2) consecutive Operating Years during the term of this Agreement (or for any one (1) Operating Year during the last four (4) Operating Years of the term of this Agreement), there is a Revenue Shortfall (as hereinafter defined), the City shall have the option of establishing the parking rate structure for the garage for the next Operating Year, provided that such rate structure shall not exceed the market rate for parking in comparable garages open to the public in downtown Boston. Any dispute between the City and the Corporation concerning whether such rate structure exceeds such market rate shall be decided by arbitration. If in any subsequent year a Revenue Shortfall does not occur, the City shall not have the option to establish the rate structure for the following years until the next occurrence which would trigger the operation of this section.

Notwithstanding the foregoing, if at any time during the term of this Agreement (except during the first year of garage operations) the parking rates for the garage are less than ninety percent (90%) of the market rate for parking in comparable garages open to the public in downtown Boston, the

City shall have the right to cause the Corporation to raise such rates to the level which would maximize garage revenues. The City's right shall be exercised by giving written notice to the Corporation, whereupon the Corporation shall, within thirty (30) days from receipt of such notice, raise such rates to such level. Any dispute between the City and the Corporation as to the market rate for parking in comparable garages open to the public in downtown Boston or the rate which would maximize garage revenues shall be resolved by arbitration, and the Corporation shall be free to set such parking rates pending the outcome of such arbitration proceedings.

Section 5.3 "Revenue Shortfall" defined. During any of the first four (4) Operating Years, a Revenue Shortfall shall occur if actual revenues received by the Corporation for such year are less than ninety-one percent (91%) of the Revenue Projection for such year. In any subsequent Operating Year, a Revenue Shortfall shall occur if actual revenues for such year are less than ninety-five percent (95%) of the Revenue Projection for such year.

Section 5.4 Arbitration. Any arbitration proceedings conducted pursuant to the provisions of this Article V shall be conducted in Boston pursuant to the rules of the American Arbitration Association and shall be limited in scope to (i) whether the Revenue Projection for a particular year is consistent with the standard set forth in the sentence

immediately following, or (ii) a determination of the market rate for parking in comparable garages open to the public in downtown Boston or the parking rate which would maximize garage revenues, as the case may be, and the outcome of such proceedings shall be conclusive and binding upon the parties hereto. In any arbitration proceedings concerning the Corporation's Revenue Projections, such Revenue Projections shall be upheld as appropriate unless the parking rate structure proposed by the Corporation is below the market rate for parking in comparable garages open to the public in downtown Boston, or the Corporation's projections of occupancy rates and the like are unreasonable. The cost of such arbitration proceedings shall be shared equally by the parties.

Section 5.5 "Operating Year" defined. For purposes hereof, an Operating Year shall be a calendar year or such other fiscal year as the Corporation may, with the approval of the City, adopt. The City agrees that such approval will not unreasonably be withheld, delayed, or conditioned. The first Operating Year shall begin on the first day of the calendar year (or other fiscal year, as aforesaid) following the date on which the garage portion of the Project opens for business, and any partial year prior to such first Operating Year shall not be considered an Operating Year for purposes hereof.

ARTICLE VI

GARAGE EXPENSES AND RESERVES

Section 6.1 Projections of Expenses and Reserves. Not later than the date which is ninety (90) days prior to the date on which the garage portion of the Project is opened for business, the Corporation shall prepare a projection (an "Expense Projection") of total Operating Expenses (as hereinafter defined) and, subject to Section 6.4, amounts to be added to operating and maintenance reserve accounts ("Reserves") for each of the first four (4) Operating Years. An Expense Projection shall contain a breakdown of Proposed Operating Expenses and Reserves into general categories, and shall state the same as dollar amounts. In each year beginning with the first Operating Year, the Corporation will submit to the City, not later than ninety (90) days prior to the start to the next Operating Year, an Expense Projection for the fourth Operating Year next following. Within thirty (30) days of receipt of any such Expense Projection, the City will notify the Corporation that it has approved such Expense Projection, or that it objects to such Expense Projection, and the reasons for such objection. Within thirty (30) days of receipt of any such objection, the Corporation will prepare a revised Expense Projection, taking into account, to the extent it deems appropriate, the objections raised by the City, and will re-submit such Expense Projection to the City for approval. If the City objects to any such revised

Expense Projection, the parties shall promptly participate in arbitration to determine whether the Expense Projection for such year is consistent with the second sentence of Section 6.5 hereof. Any failure of the City or the Corporation to act within the aforesaid thirty (30) day periods shall be deemed an approval of the proposed Expense Projection (in the case of such a failure by the City) or consent to the City's proposed changes to such Expense Projection (in the case of such a failure by the Corporation). Each Expense Projection shall include an annual allowance for maintenance of the park portion of the Project.

Section 6.2 Excess Expenditures. If for any two (2) consecutive Operating Years during the term of this Agreement (or any one (1) Operating Year during the last four (4) Operating Years of this Agreement), there are Excess Expenditures (as hereinafter defined), the City shall have the option of reviewing and approving the Corporation's operating budget for the Operating Year in which such Excess Expenditures are reported to the City (the "Budget Year"). If the City notifies the Corporation of its intention to exercise such option, the Corporation shall prepare and deliver to the City a proposed budget, prepared on a line-item basis, outlining its anticipated Operating Expenses for the Budget Year. Within thirty (30) days of receipt of any such budget, the City will notify the Corporation that it has approved such proposed budget, or that it objects to one or

more items contained in such proposed budget, and the reasons for such objection. Upon receipt of any such objection, the Corporation will prepare a revised budget, taking into account, to the extent it deems appropriate, the objections raised by the City, and will re-submit such budget for approval. If the City and the Corporation agree on the total amount of Operating Expenses provided for in such budget, the Corporation agrees that its actual expenditures for Operating Expenses in the Budget Year shall not exceed the total Operating Expenses permitted by such budget. If the Corporation and the City fail to come to an agreement on the total amount of Operating Expenses to be provided for in such budget, the parties shall participate in arbitration to determine whether such amount proposed by the Corporation is consistent with the second sentence of Section 6.5 hereof.

Notwithstanding the foregoing, if during any Operating Year (except the first Operating Year) the actual Operating Expenses are more than one hundred ten percent (110%) of the Operating Costs of comparable garages referred to in Section 6.3 hereof, the City shall have the right to review and approve the Corporation's operating budget for the next Operating Year. The City's right shall be exercised by giving written notice to the Corporation, whereupon the Corporation shall prepare a budget and deliver the same to

the City for its approval as provided in the preceding paragraph. Any dispute arising under this paragraph shall be submitted to arbitration.

Section 6.3 "Excess Expenditure" defined. During any of the first four (4) Operating Years, an Excess Expenditure shall occur if: (i) the actual Operating Expenses for such year exceed the total Operating Expenses budgeted for such year by more than nine percent (9%), and (ii) such actual Operating Expenses are in excess of those incurred by comparable garages located in downtown Boston. The parties recognize that there may not be such a comparable parking garage, in which case similar well-maintained garages operated in downtown Boston to serve primarily office or commercial, as distinguished from residential, uses, will be used as a point of reference in establishing a "comparable garage" for purposes of this Section 6.3 and other sections of this Agreement, and adjustments will be made to reflect the twenty-four hour operation of the garage, the fact that it will be operated separately from any other structure, its underground location, and any other characteristic which may distinguish the garage from such "similar" garages. In any subsequent Operating Year, an Excess Expenditure shall occur if: (i) the actual Operating Expenses for such year exceed the total Operating Expenses budgeted for such year by more than five percent (5%), and (ii) such actual Operating Expenses are in excess of those incurred by such comparable

garages. Any dispute as to the Operating Expenses incurred by such comparable garages shall be submitted to arbitration as provided in Section 6.5 hereof.

Section 6.4 Reserves. The Corporation agrees that it shall not add to the operating and maintenance reserve accounts for the Project in any Operating Year any amount in excess of the amount budgeted for Reserves in the Expense Projection for such Operating Year and it shall not add to any such account in any Operating Year if the sum of the balances in all such reserve accounts exceeds an amount equal to twenty percent (20%) of the total costs of constructing the Project (such amount to be increased from time to time by percentage increases in an index reasonably reflecting construction cost increases after the construction of the Project.) The Corporation may expend from such reserve accounts such sums as it deems appropriate for the operation, maintenance and repair of the garage portion of the Project, provided that the Corporation shall not make any expenditure from such reserves accounts without the prior approval of the City, (x) which would involve material structural alterations or material design changes to the garage portion of the Project, or (y) which would require any refinancing, or (z) in the last four (4) Operating Years of this Agreement, unless such expenditure is necessary to maintain the garage in a safe operating condition.

Section 6.5 Arbitration. Any arbitration proceedings conducted pursuant to the provisions of this Article VI shall be conducted in Boston pursuant to the rules of the American Arbitration Association and shall be limited in scope to (i) whether the total amount of Operating Expenses proposed by the Corporation for a particular year is consistent with the standards set forth in the sentence immediately following, or (ii) the amount of Operating Expenses incurred by "comparable garages" described in Section 6.3 hereof, and the outcome of such proceedings shall be conclusive and binding upon the parties hereto. In any such arbitration proceedings, the Corporation's Expense Projections or budget shall be upheld as appropriate unless such Expense Projection or budget is excessive when compared to "comparable garages" described in Section 6.3 hereof. The cost of such arbitration proceedings shall be shared equally by the parties.

Section 6.6 "Operating Expenses" defined. For purposes hereof, Operating Expenses shall be all costs and expenses incurred in connection with the operation, maintenance and repair of the Project which are not paid out of a reserve account, including, without limitation, all costs for labor and benefits, materials, services, utilities, insurance, all federal, state and local charges, assessments, levies or similar impositions or impositions in lieu thereof, permits and licensing fees, and amounts expended for the purpose of complying with the Corporation's obligations hereunder, under

a ground lease of the subsurface portion of the Project area, under a management contract for the operation of the garage, or under other documents imposing obligations on the Corporation relative to all or any part of the Project, but shall not include any amount paid pursuant to G.L.c. 121A, §10, or pursuant to a contract under G.L.c. 121A, §6A, or any amount which constitutes real estate taxes, rent or debt service.

ARTICLE VII

REPORTS AND AUDIT

Section 7.1 Reports and Audit. Within one hundred twenty (120) days after the end of each Operating Year, the Corporation shall furnish to the City true, correct, complete and certified financial statements setting forth the amount of revenues received by the Corporation for the immediately preceeding Operating Year, and the amount of Operating Expenses and Reserves paid or applied for such year. Such statement shall be prepared in conformity with the provisions hereof by a nationally recognized accounting firm selected by the Corporation. The City shall have the right to conduct an independent audit of the Corporation's records regarding the operation of the garage portion of the Project, to ascertain the accuracy of any such financial statement submitted by the Corporation. This independent audit may be conducted at any time within eleven (11) months of the end of any Operating Year, and shall be conducted by by a nationally recognized

accounting firm of the City's choice. In the event the amount of Revenues, Operating Expenses or Reserves shown on such independent audit shall vary by more than five percent (5%) that shown in any such financial statement submitted by the Corporation, the Corporation shall pay the total cost of such audit, and otherwise the cost of such audit shall be borne by the City.

ARTICLE VIII

MAINTENANCE, OPERATION, AND PUBLIC ACCESS

Section 8.1. Maintenance and Operation. The Corporation shall, at all times during the term of this Agreement, keep the Project in good and safe condition and repair, and in the occupancy, maintenance and operation of the Project, shall comply with all laws, ordinances, codes and regulations applicable thereto. Not less than ninety percent (90%) of the parking spaces in the garage shall be public spaces.

Notwithstanding the foregoing, the Corporation shall not be responsible for the condition or operation of the existing garage during any period of occupancy by the existing lessee of such garage (or any affiliate thereof), even if such period is after the Acquisition Date. Furthermore, if in connection with any settlement of such lessee's eminent domain damages on account of a taking of the Project Area the Corporation undertakes obligations to such lessee which are inconsistent with its obligations hereunder, the Corporation

shall be relieved of such obligations hereunder to the extent necessary to permit the Corporation to perform its obligations to such lessee.

Section 8.2. Garage: Twenty-Four Hour Operation. The garage portion of the Project shall be open for public parking on a twenty-four hour basis, provided that the Corporation, if it deems it advisable, may close portions of the garage (including means of access to the garage) during off-peak periods. The security measures adopted by the Corporation shall take into account such twenty-four hour operation.

Section 8.3. Open Space: Public Access. Except as otherwise provided in this Section 8.3, the open space portion of the Project (the "Open Space") shall be open to the public on a twenty-four hour basis every day of the year. The Corporation will regulate vendors and performing artists using the Open Space in accordance with a program to be approved by the City prior to completion of construction of the Open Space. The Corporation shall have the right to temporarily close portions of the Open Space at any time for reasons of safety, security or maintenance, and may, with the prior approval of the City, close off portions of the Open Space dedicated to or used in connection with programming

activities. The Corporation may also close off the garage entrances located in the Open Space and areas immediately adjacent thereto.

Section 8.4. Open Space: Name. The Corporation agrees that the City shall have the exclusive right to designate a name for the Open Space, provided that the City shall give notice of its intention to designate a name for the Open Space to the Corporation not less than thirty (30) days prior to any official announcement of such intention.

ARTICLE IX

CITY'S OBLIGATIONS

Section 9.1. Cooperation. The City and the Authority agree to fully cooperate with the Corporation in reviewing the Corporation's requests for approvals required for the Project (including, without limitation, approvals required under this Agreement and approval of a new or amended commercial area revitalization district plan to include the Project Area in such a district), and to fully cooperate with and undertake all reasonable actions to insure the success of the Corporation's efforts to obtain approvals from the City, the Authority, and departments or agencies of the City; provided, however that a good faith disapproval by the City

pursuant to the terms of this Agreement shall not be deemed such a failure to cooperate. The Corporation's obligations hereunder shall be conditioned on obtaining approvals of all licenses and permits required for the construction and use of the Project (including permits required for the implementation of any measures described in Article III hereof).

ARTICLE X

REIMBURSEMENT FOR CERTAIN COSTS

Section 10.1. City's Professional Costs. The Corporation agrees to cause to be paid the City's costs for outside legal and financial professionals for services rendered to the City in connection with its review of the Project, and other professional and out-of-pocket costs related to the Project, up to a maximum of sixty thousand dollars (\$60,000.00). Such payment will be made as follows:

(a) thirty thousand dollars (\$30,000.00) shall be paid within thirty (30) days after the Acquisition Date, and

(b) thirty thousand dollars (\$30,000.00) shall be paid if and when the construction financing for the Project (which shall not be deemed to include any interim financing which is limited to acquisition, demolition, design and related costs) is in place.

Section 10.2. Certain Litigation. In the event of any legal, arbitration (other than arbitration pursuant to Articles V or VI hereof), or similar proceeding brought by any party hereto to enforce any provision of this Agreement or any other agreement relative to the Project and executed by the Corporation, Friends of Post Office Square, Inc., and an affiliated entity, or any one or more of them, on the one hand, and the City and the Authority, or either of them, on the other hand, the reasonable attorneys fees, court costs, and related expenses incurred by such party shall be paid for by the party or parties against whom such enforcement is obtained.

In the event of any legal or similar proceedings brought by the present lessee of the Project Area against the City or the Authority, or any action brought by the Corporation or any affiliate thereof against such lessee to which the City or the Authority is or becomes a party, the Corporation agrees to cause to be paid the City's reasonable costs for outside legal counsel for representation of the City or the Authority in such action, and any amount paid by the City to such lessee which constitutes attorneys fees awarded to such lessee by any court pursuant to any such action. Such amounts shall be paid at the closing of construction financing for the Project (which shall not be deemed to include any interim financing which is limited to acquisition, demolition, design and related costs), or, if the Project does not go forward, such amounts shall be paid

on the earlier of the date on which the Corporation's right to proceed with the Project is terminated pursuant to this Agreement or the date on which the Corporation abandons the Project.

Prior to instituting any eminent domain proceedings or commencing any litigation with respect to the Project Area, the Corporation and the partnership to be created for the purpose of constructing and operating the Project (the "Partnership") agree to deliver to the Authority an indemnity agreement to be in form and substance acceptable to the Authority, under which those entities, jointly and severally, unconditionally indemnify and agree to hold the City and the Authority harmless from and against all damages awarded by a final judgment of a court of competent jurisdiction in connection with any litigation that may be commenced by any person or entity presently having an interest in the Project Area against the City or the Authority and based upon claims arising out of approvals given under Chapter 121A by the City or the Authority with respect to the Project, or the implementation thereof. Such indemnity agreement shall provide that the payment of such damages will be made only out of assets of the Partnership or the Corporation and revenues from the Project received by either the Partnership or the Corporation. Such agreement shall further provide that the obligations contained therein shall be in addition to the obligation of the Corporation to pay certain legal costs of the City, as set out above.

Notwithstanding the foregoing, it is expressly understood that any mortgagee of all or a portion of the Project or the Project Area, or any party claiming by, through or under any such mortgagee, shall not be liable to the City or the Authority for costs which shall have accrued against the Corporation.

ARTICLE XI

MISCELLANEOUS

Section 11.1. Approvals and Notices. Where provisions of this Agreement require that notices, consents, approvals, determinations, and the like (collectively, an "approval") are required to be given to the City or received from the City hereunder, such approval shall be conclusively deemed to be a final approval by the City with respect to the particular document or proposed action for which such approval was given, if given to or received from the Mayor, or any staff member designated by the Mayor to receive or give such approval. Written notice of any such designation by the Mayor shall be given to the Corporation, and any such designation may be revoked by like notice.

Notwithstanding the foregoing, any notice of termination of the City's or the Authority's approvals of the Project or of the Corporation's rights to proceed with the Project shall require the approval of the Board of Directors of the Authority and the Mayor.

Notices shall be deemed given when received at the respective parties' addresses given below, or to such other address as any party may designate by similar notice to the others:

the Corporation: Post Office Square Redevelopment Corporation
c/o Friends of Post Office Square, Inc.
One Post Office Square
Boston, Massachusetts 02110

with a copy to: James B. White, Esquire
Palmer & Dodge
One Beacon Street
Boston, Massachusetts 02108

the City: Mayor
City of Boston
City Hall
Boston, Massachusetts 02201

the Authority: Boston Redevelopment Authority
City Hall
Boston, Massachusetts 02201
Attention: Director

All notices and approvals sent to the City or the Authority shall be sent to both of them. Any requests for approvals made by the Corporation to the City or the Authority where such approvals shall be deemed granted after a period of non-reply by the City or the Authority shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters:

"NOTICE

THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY.
FAILURE TO RESPOND WITHIN ____ DAYS SHALL RESULT IN
AUTOMATIC APPROVAL."

Section 11.2. Obligations of the Corporation. Subject to the provisions of applicable law, the obligations of the Corporation hereunder may, by notice to the City and the Authority, be delegated to and assumed by any entity controlled by or affiliated with the Corporation, or to any other person or entity pursuant to a binding contract or lease under which such obligations are expressly delegated and assumed.

Section 11.3. No Personal Liability. The persons acting from time to time on behalf of the City, the Authority, the Corporation or any entity affiliated with or controlled by the Corporation shall not have any personal liability hereunder.

Section 11.4. Invalid Provisions. If any provisions of this Agreement are held to be invalid, the remainder of this Agreement shall not be affected thereby, if such remainder would then conform to the requirements of applicable laws.

Section 11.5. Status Reports. Recognizing that the parties may find it necessary to establish to each other and to third parties the then current status of performance

hereunder, either party, on the written request of the other made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this Agreement.

Section 11.6. Stock of the Corporation. Reference is made to Section 7 of Chapter 121A, which requires that the stock of a Chapter 121A corporation be offered to the owners of the real estate within the location of the project. The City acknowledges that the Corporation has offered to the City the right to subscribe to the stock of the Corporation, but the City, having determined that it is not in the best interests of the City or the Project for the City to own such stock, has notified the Corporation that it declines such offer.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement in five counterparts to be signed, sealed and delivered by their duly authorized officers or representatives.

APPROVED AS TO FORM:

CITY OF BOSTON

By _____
Mayor

WITNESS:

BOSTON REDEVELOPMENT AUTHORITY

By _____
Director

POST OFFICE SQUARE
REDEVELOPMENT CORPORATION

By _____
President

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss: _____, 1986

Then personally appeared the Honorable Raymond L. Flynn, Mayor of Boston, who executed the foregoing on behalf of the City of Boston and acknowledged the same to be the free act and deed of said City, before me.

Notary Public
My Commission expires:

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss: _____, 1986

Then personally appeared Stephen Coyle, Director of the Boston Redevelopment Authority, who executed the foregoing on behalf of the Boston Redevelopment Authority and acknowledged the same to be the free act and deed of said Authority, before me.

Notary Public
My Commission expires:

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss: _____, 1986

Then personally appeared Robert W. Weinberg, President of Post Office Square Redevelopment Corporation, who executed the foregoing on behalf of the said corporation and acknowledged the same to be the free act and deed of said corporation, before me.

Notary Public
My Commission expires:

Contract Between the City of Boston
and
Post Office Square Redevelopment Corporation
Pursuant to Section 6A of Chapter 121A
of the Massachusetts General Laws

This Agreement made this ____ day of _____, 1986, under Sections 6A, 10 and 15 of Chapter 121A of the General Laws of the Commonwealth of Massachusetts is by and between Post Office Square Redevelopment Corporation, a corporation formed under the laws of the Commonwealth of Massachusetts, (hereinafter called the "Corporation") and the City of Boston, a municipal corporation of the Commonwealth of Massachusetts (hereinafter called the "City").

WITNESSETH THAT:

WHEREAS, Friends of Post Office Square, Inc. has caused to be filed with the Boston Redevelopment Authority (the "Authority") an application dated November 14, 1984, (such application, as amended as described below, is hereinafter called the "Application") under the provisions of said Chapter 121A of the General Laws and of Chapter 652 of the Acts of 1960, as amended (collectively, "Chapter 121A"), for consent to form the Corporation and for approval of a project (the "Project"), more particularly described in the Application, consisting of the construction of an underground parking garage and grade level urban open space (the "Redevelopment Improvements") in the Project Area (as defined in the Application); and

WHEREAS, the Authority approved the Project and consented to the formation of the Corporation by vote on May 10, 1984; and

WHEREAS, the Mayor of the City approved the Authority's approval on October 4, 1984.

WHEREAS, the vote of the Authority and the approval of the Mayor of the City were filed with the office of the City Clerk on January 17, 1986 and such approval has become final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, the Corporation was formed by filing its Articles of Organization and a certificate of the Authority evidencing such approval and consent in the Office of the Secretary of the Commonwealth of Massachusetts on January 23, 1986, in accordance with the provisions of Chapter 121A; and

WHEREAS, the Authority approved a First Amendment to the Application dated December 23, 1985, by vote on April 3,

1986, and a Second Amendment to the Application dated _____, 1986, by vote on _____, 1986; and

WHEREAS, the Mayor of the City approved the Authority's approval of the First Amendment to the Application on June 5, 1986, and the Authority's approval of the Second Amendment on _____, 1986. The vote of the Authority and the approval of the Mayor with respect to the First and Second Amendments were filed with the office of the City Clerk on June 6, 1986 and _____, 1986, respectively.

NOW, THEREFORE:

1. The Corporation hereby agrees with the City as follows:

(a) To carry out the Project and cause the Project to be constructed, maintained and managed in accordance with the Application, the provisions of Chapter 121A of the General laws as now in effect, and of Chapter 652 of the Acts of 1960 as now in effect, the Minimum Standards for the Financing Construction, Maintenance and Management of the Project (the "Standards") set forth in the Report and Decision of the Authority approving the Project, as it may be amended, (the "Report and Decision"), the Development Agreement entered into by and among the Corporation, the City and the Authority (the "Development Agreement"), any Regulatory Agreement entered into with respect to the Project and any other agreement with the City and Authority, or either, relating to the Project, all of which are incorporated herein by reference.

(b) To pay to the Commonwealth of Massachusetts for each calendar year during which the Project is subject to Chapter 121A, the urban development excise required under Section 10 of 121A.

(c) Subject to the provisions and limitations of this Agreement, to pay with respect of each of the calendar years during which the Project is subject to Chapter 121A and during which the Corporation or its lessee operates the garage portion of the Project, the amount, if any, by which the net proceeds of the Corporation computed as hereinafter set forth (the "Net Proceeds") for the year preceding the year in which such payment is due exceeds the urban redevelopment excise payable with respect to such preceding year pursuant to the provisions of Section 10 of Chapter 121A and of this Agreement. The provisions of this subparagraph 1(c) will apply to Net Proceeds generated by the Project only, and not to any revenues generated from the operation of the existing garage located in the Project Area, and will not have any effect prior to the date on which the garage portion of the Project is placed in service. Net Proceeds shall be defined as:

- (i) the gross income of the Corporation, which for purposes of this Agreement and Section 10 of Chapter 121A shall be all income of the Corporation actually received in any calendar year, including the rent actually received by the Corporation under the proposed ground lease, as described in the Application; less
- (ii) the cost of maintenance of the open space portion of the Project (as such maintenance is described and provided for in the Development Agreement) and all taxes or other costs levied by any state, local or federal governmental authority and payable by the Corporation in such year (including any liabilities incurred prior to completion of the garage portion of the Project and paid in such year). The Corporation agrees that it will make all reasonable efforts to notify the City of the amount of all such taxes and other costs and to minimize the amount of such payments, which efforts will include contesting the amount of such payments, if appropriate.

As part of the review of the financing plan to be submitted by the Corporation to the City under the Development Agreement, the City may require that this paragraph 1(c) be amended to provide for a portion of the amounts payable to the City to be unsubordinated to debt service, if in connection with such review it determines that notwithstanding such priority payment the Project may be financed solely from revenues of the Project.

(d) To cause to be filed with the Assessing Department of the City of Boston (the "Assessing Department") within ninety (90) days of the end of each calendar year during which this agreement is in effect a statement of the income and expenses of the Project, and the amount invested in the construction of the Project.

(e) To file with the Assessing Department within ninety (90) days of the end of each calendar year during which this Agreement is in effect an audited report with respect to the Corporation, prepared by an independent Certified Public Accountant, consisting of a statement of profit and loss, a balance sheet, a statement of receipts and disbursements for the preceding calendar year, and a certified copy of the Corporation's urban redevelopment excise tax return as submitted to the Department of Revenue.

(f) To submit to the Commissioner of Assessing or a designated representative written authorization to examine all urban redevelopment excise tax returns and attachments thereto filed by the Corporation with the Department of Revenue.

2. If in connection with the City's review of the financing plan the City determines that an additional amount above that required to be paid under paragraph 1(c) hereof may be paid by the Corporation to the City at the time of the closing of the construction financing for the Project, and that notwithstanding such payment the Project may be financed solely from the revenues of the Project, the City may require the Corporation to pay to the City from the proceeds of the construction financing such portion of such additional amount as the City deems to be in the best interest of the City.

3. Any amount payable under Paragraph 1(c) hereof shall be paid in accordance with the following schedule:

(a) To the extent that such payment in any calendar year is equal to or less than Two Hundred Fifty Thousand Dollars (\$250,000.00), twenty percent (20%) of such payment shall be paid to the collector of the City for deposit in the general fund of the City, and eighty percent (80%) of such payment shall be paid as a gift or grant to The Fund for Parks and Recreation in Boston (the "Park Trust") created pursuant to Section 53A of Chapter 44 of the General Laws, by instrument dated February 25, 1983, a copy of which is attached hereto.

(b) To the extent that such payment in any calendar year exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00), eighty percent (80%) of such excess shall be paid to the collector of the City for deposit in the general fund of the City, and twenty percent (20%) of such excess shall be paid to the Park Trust.

(c) In the event that the Park Trust is terminated, or if under applicable law payments hereunder cannot be made to it, payments required to be made to the Park Trust under this Agreement shall be made in accordance with an amendment to this Agreement or, during any period in which there is not such amendment providing for the disposition of such funds, to the collector of the City.

4. Except as otherwise herein provided, any payment which may become due to the City with respect to any calendar year pursuant to the provisions of this Agreement shall be paid in or within thirty days from the date of filing of the Corporation's urban redevelopment excise return with the Commonwealth of Massachusetts with respect to such calendar year. Any overpayment by the Corporation with respect to any calendar year shall, at the written election of the Corporation, be applied to reduce payments otherwise due hereunder. In the event that the amount of any overpayment is not so applied prior to the date on which the next payment by the Corporation becomes due under this Agreement, the Corporation shall, notwithstanding anything else herein to the contrary, be entitled to offset the amount of such

overpayment against such next payment. Nothing herein shall limit the Corporation's rights under law to recover any alleged overpayment.

5. The Corporation intends to enter into a lease of the land or improvements within the Project Area which provides for rental payments to the Corporation based in whole or in part on income from operations of the proposed garage, and agrees with the City that such lease shall require the lessee thereunder to submit to the Assessors within ninety (90) days of the end of each calendar year for which this Agreement and the lease are in effect an audited report, prepared by an independent Certified Public Accountant, consisting of a statement of profit and loss from garage operations, a balance sheet, a statement of receipts from garage operations and related disbursements for the preceding calendar year, and such other financial information as the Assessing Department reasonably may require. At the request of the Assessor, the Corporation shall enforce the lease provisions regarding provision of records to the Assessor. The cost of such enforcement shall be a deduction from Net Proceeds as defined in Paragraph 1 (c). At the request of the Assessors the Corporation shall deliver to the Assessors such additional information concerning the operation of the Project and the finances of the Corporation as the Assessors may from time to time require.

6. The obligations of the Corporation under this Agreement and the Application are conditioned in all respects upon the receipt of all necessary approvals under Chapter 121A and acquisition by the Corporation of the real property on which the Project is to be constructed.

7. The Authority has extended the fifteen-year period of exemption from taxation for the Project to forty years, under the provisions of Chapter 121A, Section 10. Subject to the agreements, instruments and documents referred to in Paragraph 1(a) hereof, the Corporation and the City agree that, after notice to the Authority and the City, the Corporation, subject to the Report and Decision, may terminate the period of tax exemption, pursuant to the second paragraph of Section 6A of Chapter 121A. Upon such election, the Corporation shall have the rights, privileges and duties of a corporation subject to Chapter 156 of the General Laws. The Corporation and the City agree that in the event of such a termination, and until such time as the 121A status of the Corporation would have expired but for the provisions of this paragraph, the Corporation shall pay to the City with respect to each calendar year the amount, if any, by which the amount which would have been payable under Section 10 of Chapter 121A and the provisions of this Agreement exceeds the amount paid to the City in such year as taxes on the Project, and that such payment shall be made in accordance with the provisions of Paragraph 3 hereof. Upon termination of the

Corporation's ownership of the Project in accordance with the Report and Decision and the agreements referred to herein, the Corporation's payment obligations hereunder will terminate.

8. The Corporation and the City agree with each other that, without mutual consent, any amendment subsequent to the delivery of this contract of any of the provisions of Chapter 121A of the General Laws or of Chapter 652 of the Acts of 1960 or of the Rules and Regulations or Standards now applicable to the Project shall not affect this Agreement.

9. Subject to the provisions of Chapter 121A, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Executed as a sealed instrument as of the day and year first above written.

POST OFFICE SQUARE
REDEVELOPMENT CORPORATION

CITY OF BOSTON

By _____
President

By _____
Mayor

By _____
Commissioner of Assessing

Doc #4821

BOSTON REDEVELOPMENT AUTHORITY

SECOND AMENDMENT TO THE REPORT AND DECISION ON THE APPLICATION OF SUBSIDIARIES OF FRIENDS OF POST OFFICE SQUARE, INC., FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 121A, AS AMENDED, AND CHAPTER 652 OF THE ACTS OF 1960, AS AMENDED AND FOR CONSENT TO THE FORMATION PURSUANT TO SAID CHAPTER 121A OF AN URBAN REDEVELOPMENT CORPORATION UNDER THE NAME POST OFFICE SQUARE REDEVELOPMENT CORPORATION FOR THE PURPOSE OF UNDERTAKING AND CARRYING OUT THE PROJECT UNDER SAID CHAPTER 121A

A. Prior Proceedings. Reference is made to the "Report and Decision on the Application of Subsidiaries of Friends of Post Office Square, Inc., for the Authorization and Approval of a Project under Massachusetts General Laws Chapter 121A, as Amended, and Chapter 652 of the Acts of 1960, and for Consent to the Formation pursuant to said Chapter 121A of an Urban Redevelopment Corporation for the Purpose of Undertaking and Carrying Out the Project" adopted by vote of the Boston Redevelopment Authority (the "Authority") at a meeting held May 10, 1984. Said report and decision was amended by a First Amendment to Report and Decision, dated April 3, 1986. The report and decision, as amended by said first amendment, is hereinafter referred to as the "Report and Decision". Capitalized terms not defined herein shall have the meanings set forth in the Report and Decision.

B. Amendment to Application. By a Second Amendment to the Application, dated October 17, 1986 (the "Second Amendment"), the applicants have sought authorization and approval from the Authority for certain amendments to the Report and Decision. A copy of the Second Amendment is attached hereto as Exhibit A.

C. Authority Action. At a meeting of the Authority on October 22, 1986, in the offices of the Authority, at the New City Hall, Room 921, Boston, Massachusetts 02201, the Authority considered the Second Amendment. Robert L. Farrell, Chairman of the Authority, and Joseph J. Walsh, James K. Flaherty, Clarence J. Jones and Michael F. Donlan, members of the Authority, were present at the meeting. In acting upon the requests for approval of the Second Amendment and for an appropriate amendment to the Report and Decision, the Authority has considered the Second Amendment and all documents and exhibits filed therewith or referred to therein, and the records of the Authority with respect to the Project made prior to the Second Amendment.

The Report and Decision is hereby amended to the extent necessary to reflect the Second Amendment to the Application,

which is hereby approved. More particularly, the Authority hereby acts as follows:

1. The Authority hereby determines that the Second Amendment does not constitute a fundamental change, and that any noncompliance of the same with the Authority's Rules and Regulations is immaterial and therefore waived.
2. The Authority hereby determines that a revised Development Agreement in substantially the form attached to the Second Amendment as Exhibit A (the "Revised Agreement"), is consistent with and in furtherance of the Report and Decision.
3. The Authority hereby authorizes the Director to sign on behalf of the Authority, the Revised Agreement, with such modifications as he deems appropriate, and any related documents he deems necessary and appropriate in furtherance of the Report and Decision.
4. The Authority hereby approves the execution by the Corporation of a Contract authorized under Section 6A of Chapter 121A, in substantially the form attached to the Second Amendment as Exhibit B, with such modifications as the Director of the Authority may approve, and the Authority hereby determines that such Contract conforms to the requirement for such a contract contained in the last paragraph of Section E of the Report and Decision.
5. The Authority hereby grants permission to the Corporation to lease the Project Area during the period from acquisition of the Project Area until demolition of the existing garage, such lease to be subject to the approval of the Director of the Authority.

D. Effect on Environment. The Authority hereby finds that its approval of the Second Amendment will have no impact on the environment.

Except to the extent inconsistent herewith, all findings, determination, approvals and consents as set forth in the Report and Decision are hereby ratified and confirmed.

Doc # 482/2

October 22, 1986

MEMORANDUM

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: PAUL L. McCANN, EXECUTIVE ASSISTANT TO THE DIRECTOR

SUBJECT: SECOND AMENDMENT TO THE REPORT AND DECISION ON POST
OFFICE SQUARE 121A PROJECT

On May 10, 1984, the Authority issued a Report and Decision pursuant to the provisions of M.G.L. c. 121A and St. 1960, C. 652, as amended, consenting to the formation of Post Office Square Redevelopment Corporation (the "Corporation") as an urban redevelopment corporation for the purpose of carrying out a project (the "Project") in Boston, Massachusetts. The Project consists of the acquisition of a parcel of land in downtown Boston containing approximately 1.56 acres and bounded by Congress, Franklin, Pearl and Milk Streets, the demolition of the public parking garage now located thereon and the construction of a new underground parking garage and grade level park. Such report and decision was approved by the Mayor on October 4, 1984 and was filed with the Clerk of the City on January 17, 1986, and was amended by a First Amendment to report and decision dated April 3, 1986, which was approved by the Mayor on June 5, 1986. Such report and decision, as amended, is hereinafter called the "Report and Decision".

The applicants now seek the Authority's approval of a Second Amendment to the Report and Decision (the "Amendment"). The Amendment does not request any changes in the essential physical elements of the Project. Thus, the size, location, dimensions, capacity and use of the underground garage and grade level-park remain as approved in the Report and Decision. Further, as originally required by the Report and Decision, all revenues flowing out of the Project go to the benefit of the City, and none go to the project proponents or the urban redevelopment corporation.

The purpose of the Amendment is to enable the Corporation to carry out the terms of a settlement with the lessee of the Project Area, First Franklin Parking Corporation, concerning First Franklin's damages upon the eminent domain taking of the Project Area. The settlement provides for a cash payment to First Franklin and an agreement to lease the existing garage to First Franklin for a period of fifteen months after acquisition of the Project Area by the Corporation. The settlement will permit the

Corporation to proceed promptly to acquire the Project Area and construct the Project.

An appropriate vote follows:

VOTED: That the document presented at this meeting entitled "Second Amendment to the Report and Decision on the Application of Subsidiaries of Friends of Post Office Square, Inc. for the Authorization and Approval of a Project under Massachusetts General Laws Chapter 121A, as Amended, and Chapter 652 of the Acts of 1960, as Amended, and for Consent to the Formation pursuant to said Chapter 121A of an Urban Redevelopment Corporation under the name Post Office Square Redevelopment Corporation for the purpose of Undertaking and Carrying Out the Project under said Chapter 121A", does not propose a fundamental change in the Project, that any non-compliance of the same with the Authority's Rules and Regulations is immaterial and therefore waived and that the same be and hereby is approved and adopted.

